SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-979

JOHN J. TWOMEY, et al.,

Petitioners,

vs.

DONALD P. WRIGHT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ORDER BELOW

The order of the United States Court of Appeals for The Seventh Circuit affirming the findings of fact and conclusions of law of the United States District Court, Northern District of Illinois, Eastern Division, is set forth in Appendix A. The findings of the United States District Court, Northern District of Illinois, Eastern Division, is set forth in Appendix B.

JURISDICTION

The instant Petition for Writ of Certiorari is filed pursuant to Title 28 U.S.C. § 1254(1) and seeks review of the judgment of the United States Court of Appeals for the Seventh Circuit entered on November 19, 1974. No petition for rehearing was filed with the Court of Appeals.

QUESTION PRESENTED FOR REVIEW

1. Whether the unintentional failure of prison officials to provide the prescribed diet to an inmate, resulting in less than ten days of "discomfiture" constitutes cruel and unusual punishment within the meaning of the Eighth Amendment to the United States Constitution?

2. Whether absent a showing of shocking circumstances this Court should permit extension of the prohibition against cruel and unusual punishment to embrace prisoner grievances similar to the instant complaint, particularly in light of new, highly responsive grievance machinery established in the several states to review prisoner complaints?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VIII:

> "Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Title 42 U.S.C. § 1983:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity or other proper proceeding for redress.

STATEMENT OF THE CASE

On September 28, 1972, plaintiff filed a complaint in the United States District Court for the Northern District of Illinois, No. 72 C 2281, under 42 U.S.C. § 1983. He named the Department of Corrections Hospital, Doctors, Pharmacists and the Warden of Stateville Penitentiary as defendants. He alleged that he suffered from a permanent physical condition which had resulted from a shotgun blast in the lower abdomen. It was necessary for doctors, prior to his incarceration, to resect approximately 65% of his small intestines resulting in a condition known as malabsorption syndome—an inability to retain foods long enough for absorption into the system to take place. Plaintiff alleged that he required special medication, frequent feedings and dietary supplements to maintain his health and that he was not getting them.

An expedited hearing was held on the complaint on November 3, 1972, and extensive testimony was heard. The Court found that: (1) defendants have not intentionally, wilfully or knowingly denied medical treatment to the plaintiff; (2) in the absence of any showing of complete denial of medical treatment or other exceptional circumstances, the District Court will not grant relief to prisoners seeking remedies against prison officers and physicians; and (3) the defendants had accorded medical treatment to the plaintiff and, in light of the absence of physical deterioration of plaintiff, the Court ordered the complaint for injunction denied.

On January 16, 1973, plaintiff filed another complaint before the same court. It was alleged that plaintiff had

been disciplined on December 1, 1972, through December 11, 1972, without having been accorded procedural due process and under conditions which constituted cruel and unusual punishment. Warden John Twomey, Dr. Julius Venckus, Lt. Stan Sharp, Officer Long, Counselor Stuart Trapp, Sgt. Simpson, Capt. Shifflet and Captain Pullman were named as defendants.

On October 16, 1973, an evidentiary hearing began. Testimony established that, at the time of the incident, plaintiff was permanently assigned to the officer's mess hall at the institution. In order to obtain the required frequent high protein meals, plaintiff was allowed to spend all of his time in the officer's kitchen and to prepare and eat whatever he wanted to eat at any time. Quantities of Portegen, a prescribed high protein dietary supplement, were kept available, and plaintiff was receiving various medications to combat his chronic diarrhea. Dr. Venckus testified that he frequently prescribed Lomotil, a low-grade narcotic, but attempted to cut the dosage prior to the incident at issue. On one occasion plaintiff threatened to commit suicide if he didn't get Lomotil, and other doctors treating him usually prescribed less potent drugs such as Kaopectate for the condition.

On December 1, 1972, plaintff became involved in a fight with another inmate at the officer's kitchen. Both were immediately separated and walked to disciplinary holding cells. Several hours later, plaintiff was brought before the disciplinary committee. Defendants Trapp and Sharp were serving on that committee. A hearing on the charge took place, and the District Court held that there had been good faith compliance with the requirements of procedural due process as interpreted by the courts at that time.

The committee found that plaintiff had engaged in the altercation and initially imposed a punishment of 10 days in an isolation cell. That decision was recorded on the disciplinary ticket.

As was customary, however, the committee consulted a special file to determine whether Wright had any medical problems which would prevent him from doing isolation time. They found that he had special dietary and medicinal requirements. Accordingly, the committee changed their disposition from:

> "Placed in isolation 10 days and recommended for transfer,"

to read as follows:

> "Placed in Detention Hospital on isolation rations 10 days and recommended for transfer."

Both Trapp and Sharp testified that they had changed the disposition from "isolation" to "Detention Hospital" so that Wright's special requirements could be met. The words "isolation rations" were included because it was customary to do so and to indicate to the hospital staff that the inmate was doing isolation time while there. Neither witness could testify what isolation rations included and neither intended that Wright be deprived of his special requirements. Following the hearing, Lt. Sharp wrote a note to Sgt. Simpson at the Detention Hospital with a copy to Dr. Venckus, notifying him of the disposition (Defendant's Exhibit No. 10).

On Friday afternoon, December 1, 1972, Wright was taken to the Detention Hospital to begin serving his time. Defendant Simpson was in charge of the unit at the time and he recognized Wright as he arrived. He testified that he had had Wright in the Detention Hospital on about six prior occasions and that:

> "I knew he had stomach trouble, that he was on a special diet and that he was working down in the officer's kitchen."

Simpson testified that, after Wright's arrival, he notified the hospital desk and the cell house that he was there, and made out a medical chart for him. He then sent an inmate nurse to the drug room with the chart to have his current prescriptions entered and to arrange for the medications to be sent there instead of the cellhouse. Simpson then called the food service supervisor at the officer's kitchen and arranged for the special diet and dietary supplements to be sent up. Simpson then left the institution for the weekend.

Simpson testified that during the following week the supplement Portegen was kept constantly available for Wright and that inmate nurses were instructed to give it to him any time he wanted it. He personally observed the first two of the three meals brought up each day, and they were "about twice what an ordinary man would eat." A doctor visited every cell in the facility at about 8:00 A.M. each day and Simpson did not hear of any complaints from Wright to anyone during the ten day period.

Simpson testified that he had received the note from Lt. Sharp indicating that plaintiff had been sent there "on isolation rations" (Defendant's Exhibit No. 10). He stated, however, that it only meant the inmate was doing isolation time for a certain period of days. The phrase "isolation rations" meant nothing to him in terms of food or medication because "the majority of the people that are placed up there is all Class C health, or they have a health hazard, and they have special diets for them."

Dr. Julius Venckus, the prison physician, testified that he received notice that Wright had been placed in the hospital but that he took no action because Sgt. Simpson and the pharmacy had all the information to provide Wright with the correct diet and medication. Actual delivery of these items were beyond his responsibility. He did see Wright at sick calls on December 10th and 20th but could recall no complaints about food or medicine.

Plaintiff testified that he was placed in the Hospital on Friday but received only one meal a day until Monday and then three less than adequate meals a day for the rest of the period. He stated that he seldom received his medicine and he vacillated as to when he had first seen the doctor walking sick call rounds. He could not remember the names of any person other than Sgt. Simpson who worked in the hospital at the time, and he could not remember the names of the two inmates who shared his cell during the ten days.

Wright testified that as a result of his lack of food during the 10 day period, he suffered nausea, dizziness, weakness and loss of weight. Dr. Venckus' medical records indicated that plaintiff weighed 148 lbs. on March 24, 1972 (the date of admission to the institution), 147 lbs. on August 21, 1972, 140 lbs. on March 6, 1973, and 153 lbs. on June 6, 1973 (the date of his release). Dr. Venckus stated that the records show no medically significant weight loss during his incarceration, and that he was in satisfactory physical shape.

Three reports of an examining psychiatrist were introduced. (Defendant's Exhibits 6, 7 & 8). In part those reports state:

October 13, 1972 report (Defendant's Exhibits 6).

This inmate was placed in Detention Hospital by the prison physician because the inmate requested "nerve medicine or a tranquilizer on a permanent basis."

When the inmate is asked why he is in Detention Hospital he aggrievedly replies, "Dr. Venckus sent me up here. I went to see him to receive medical treatment. I have a physical condition which the doctor for some reason don't believe is bad. I get the feeling he thinks I'm a kid."

In a long discussion following this we learn that the inmate is overfocused on his old (1968) bowel injury and surgery and has practically committed his life to thinking, talking, and centering his existence around it. This gains him more "legitimate" attention than his previous antisocial behavior. I tell him about my impression and am surprised to have the inmate respond politely that perhaps there is something to what I say.

However, he later continues to express his feeling that the prison physician dislikes him and that he therefore will not obtain what he, the inmate, considers to be proper treatment. . . .

• • •

As I review his entire history, I am led to the conclusion that the inmate is basically an antisocial personality who has now found a somatic focus for his entrenched conflicts. Tranquilizers "on a permanent basis" are not indicated.

December 21, 1972 Report (Defendant's Exhibit 7).

This inmate is summoned for interview in response to a referral from the Warden who indicates that there has been a request from the Director's Office suggesting the possibility that there may be substantial deterioration in this man since I saw him last on 13 October 1972.

I spoke to the inmate at length and can report that I find no indication of mental deterioration; as a matter of fact, I feel that his current mental state seems to be improved over that noted in the previous psychiatric examination of October.

• • •

March 2, 1973 Report (Defendant's Exhibit 8).

This inmate was placed in Detention Hospital with a notation that he complained to one of the captains that he was a very sick man, began crying, and appeared emotionally upset. The inmate relates "I went to the doctor today about my repeated stools. He gave me some medicine and I asked him politely what it was and what the purpose of it was so if it worked I would know what helped me and he got disgusted with me, or that was the impression I got. I took the prescription to the pharmacist and I asked him what it was and he said go ask the doctor, just like that. So I asked the doctor again and he said 'I know you Mr. Wright,' so I went to the sociologist's office to try to explain to him so he could give me advice how to get satisfaction from the doctor because I'm having a lot of trouble.

"This treatment thing is a two-timed thing. A patient has a right to tell the doctor if a certain medicine that's been prescribed has been tried before and doesn't work."

He goes on almost endlessly repeating himself, more interested in posing his complaints than seeking advice.

• • •

We retain the same impression as given in the Special Progress Reports of 21 December and 13 October, 1972.

• • •

The District Court found liability on the part of defendants Twomey, Venckus, Trapp, Sharp and Simpson and entered a joint and several judgment against them for $500. The U.S. Court of Appeals affirmed the judgment on November 19, 1974 by Memorandum Order which discussed none of the issues raised (see Appendix A).

REASONS FOR GRANTING THE PETITION

I.

TEMPORARY DISCOMFORT EXPERIENCED BY A PRISONER DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT WITHIN THE MEANING OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In his findings of fact and conclusions of law, the District Court judge stated:

> "I find liability on the theory that the deprivation of proper medication and diet while the prisoner was incarcerated deprived him of Eighth Amendment rights."

Further, in discussing damages, the court said:

> "Now turning to the matter of damages, there is very little for the Court to go on. *I am satisfied—I say I am satisfied—there is no evidence from which I could find that the plaintiff suffered any physical permanent impairment so what we are talking about is a period of discomfiture, and I suppose it would be proper to characterize it as illness for a period of ten days more or less. At the latter part of the ten days the situation got better.*" (emphasis added).

Defendants urge that the conditions found to exist by the court below, are not sufficient to constitute cruel and unusual punishment.

Punishments which amount to violations of an individual's Eighth Amendment rights have been defined in the past as those which can be characterized as "barbarous," *In re Kemmeler*, 136 U.S. 436, 447 (1890), "shocking to the conscience", *Church* v. *Hegstrom*, 416 F. 2d 449, 451

(2nd Cir. 1969). The general test would thus appear to be whether under all the circumstances cognizable to the court, the type of punishment shocks the general conscience or is barbarous when judged in the light of concepts of elemental decency. *Weems* v. *U.S.*, 217 U.S. 349 (1910); *Robinson* v. *California*, 370 U.S. 660 (1962). The conditions in this record do not meet those tests.

In this case plaintiff made no complaint and offered no proof concerning the actual physical conditions under which he was confined for the ten day period. His only assertion was that the lack of food and medication during the period amounted to a Constitutional deprivation. The result of that lack of food and medication was characterized by the trial judge as "a period of "discomfiture" and we strongly urge that this does not constitute cruel and unusual punishment, especially in view of the surrounding circumstances.

In a Second Circuit case, that Court recently rejected a claim precisely like the one at bar. In *Starz* v. *Cullen*, 468 F. 2d 560 (1972), plaintiff alleged that he suffered from a coronary insufficiency with arteriosclerotic heart disease and a number of other ailments. As a result the doctors had prescribed a strict fat-free diet and prison officials had failed to give him the proper foods. Defendants filed an affidavit showing a good faith attempt at compliance, and plaintiff responded with an affidavit stating authorities had made no attempt to supply a fat-free diet. The District Court dismissed the complaint and the decision was affirmed. The Court said:

> If decision turned on the precise diet afforded Startz since his return from St. Francis Hospital, as might be the case on an application by Startz to a Connecticut court having general jurisdiction over

> prisoner complaints, it might be that a hearing would have been required. However, the scope of the authority of a federal court is much narrower; it is confined to determining whether the medical treatment of the prisoner is so shocking as to constitute a denial of due process prohibited by the Fourteenth Amendment or a cruel and unusual punishment forbidden by the Eighth Amendment, selectively incorporated into the Fourteenth. Church v. Hegstrom, 416 F. 2d 449 (2 Cir. 1969); United States ex rel. Hyde v. McGinnis, 429 F. 2d 864 (2 Cir. 1970); Martinez v. Mancusi, 443 F. 2d 921 (2 Cir. 1970), cert. denied, 401 U.S. 983, 91 S. Ct. 1202, 28 L. Ed. 2d 335 (1971). 468 F. 2d at 561.

See also *Snow* v. *Gladden*, 338 F. 2d 999 (9th Cir. 1964) (where plaintiff alleged improper diet aggravated an ulcer condition causing great physical pain).

We think it clear that plaintiff in this case did not allege, nor did he prove at trial, a deprivation sufficiently serious to constitute cruel and unusual punishment. In light of the record, read as a whole, plaintiff suffered at most a temporary discomfort which was aggravated by his own mental state.

II.

ABSENT A SHOWING OF SHOCKING CIRCUMSTANCES THIS COURT SHOULD NOT PERMIT EXTENSION OF THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT TO EMBRACE PRISONER GRIEVANCES SIMILAR TO THE INSTANT COMPLAINT, PARTICULARLY IN LIGHT OF NEW, HIGHLY RESPONSIVE GRIEVANCE MACHINERY ESTABLISHED IN THE SEVERAL STATES TO REVIEW PRISONER COMPLAINTS.

In recent years the federal courts have faced a burgeoning number of civil rights suits, pursuant to 42 U.S.C. § 1983. The cause at bar is such a suit, and the decisions below stand for the proposition that the unintentional failure of prison officials to provide the prescribed diet to an inmate resulting in temporary discomfiture constitutes cruel and unusual punishment. Petitioners acknowledge the often less than ideal conditions which exist in state prisons yet they urge that the instant claim falls far short of the right designed to be protected under the Eighth Amendment.

The grievance mechanism established in the State of Illinois and many other states is ably equipped to fairly resolve prisoner complaints of discomfort like the present one. More than 50% of prisoner complaints filed in Illinois, through the established grievance procedures, result in some relief being granted. See Appendix C.

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1. Ill. Rev. St at. 1973, Ch. 38, § 1003-8-8.
(a) The Director shall establish procedures to review the grievances of committed persons. The Di-

The case at bar, as representative of hundreds of similar complaints, while fully amenable to local grievance proceedings, should have been dismissed in the District Court for failure to state a claim of a constitutional dimension or for failure to exhaust effective State administrative remedies. See *Morales* v. *Schmidt*, 494 F. 2d 85 (concurring Op. of Chief Judge Swygert) (7th Cir. 1974); *McCray* v. *Burrell*, 367 F. Supp. 1191 (D. Md. 1973) (appeal pending). Lately, the Eighth Amendment has emerged

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rector may establish one or more administrative review boards within the Department to review grievances. A committed person's right to file grievances shall not be restricted. Such procedure shall provide for the review of grievances by a person or persons other than the person or persons directly responsible for the conditions or actions against which the grievance is made.

(b) Such procedures shall provide that a record of such grievance and any decision made with respect to it shall be preserved for a period of one year.

(c) Such procedures shall allow committed persons to communicate grievances directly to the Director or some person designated by the Director outside of the institution or facility where the person is confined.

(d) All committed persons shall be informed of the grievance procedures established by the Department and they shall be available to all committed persons.

(e) Discipline shall not be imposed because of use of the grievance procedure.

See also: General Statutes of North Carolina, Ch. 148-101 and following, Code of Maryland, Art. 41, § 204(f).

as a catchall for many prisoner grievances. The Eighth Amendment was not designed with that end in mind. Justice Douglas points out in *Robinson, Supra*, that the command of the Eighth Amendment stems from the Bill of Rights of 1688, which addressed itself to punishments that were indeed cruel and unusual including burning at the stake, crucifixion, breaking on the wheel, or quartering. He goes on to say that the Eighth Amendment expresses revulsion of civilized man against barbarous acts: The "Cry of Horror" against man's inhumanity to his fellow man.

To extend the prohibition of the Eighth Amendment to the cause at bar constitutes unreasonable and unnecessary federal intervention into matters that could be satisfactorily resolved through state grievance and judicial proceedings.

This Court has spoken at length about the concept of cruel and unusual punishment but it has done so with a view towards the nature of the sentence, never with regard to the internal and administrative affairs of prisons. We submit that a pronouncement by this Court would go far in helping to eliminate specious complaints and lend considerable stability to grievance proceedings within the several states. We call upon this Court to delimit the application of the Eighth Amendment prohibition with regard to internal prison affairs.

Certiorari should be granted and the holding of the Court of Appeals reversed.

CONCLUSION

For the aforementioned reasons, the petitioner respectfully requests this Court to grant the instant Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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PETITIONER'S EXHIBIT "A"

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Argued: November 6, 1974
November 19, 1974

"Unpublished Order"
Not to be cited,
per Circuit Rule 28.

Before

Hon. LUTHER M. SWYGERT, Chief Judge
Hon. ALBERT B. MARIS, Senior Circuit Judge*
Hon. WALTER J. CUMMINGS, Circuit Judge

DONALD P. WRIGHT,
Plaintiff-Appellee,

Appeal No. 74-1106 vs.

JOHN J. TWOMEY, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 73 C 68
Philip W. Tone, Judge.

ORDER

Plaintiff Donald P. Wright brought suit against Warden John J. Twomey and various members of the staff at Stateville Penitentiary for deprivation of his constitu-

* Senior Circuit Judge Albert B. Maris of the Third Circuit is sitting by designation.

tional rights. Suit was brought pursuant to 42 U.S.C. § 1983 alleging that plaintiff had been subjected to cruel and unusual punishment in violation of the Eighth Amendment. Specifically, it was alleged that Wright suffered from malabsorption syndrome, an inability to derive adequate nutritional benefit from normal amounts of food, and that while at Stateville he was deprived of prescribed medication and dietary supplements made necessary because of this condition as a part of disciplinary disposition. It was further alleged that each of the defendants was directly involved in and responsible for this disciplinary action and that as a result of this deprivation, Wright was rendered ill for a period of approximately ten days. There is evidence in the record to support each of these allegations.

The district judge found that deprivation of proper medication and diet had occurred, that such a deprivation constituted cruel and unusual punishment in this case, and that the defendants were therefore liable, jointly and severally, in the amount of $500. As to Warden Twomey, the district judge found that sufficient notice of Wright's condition existed to require him to take some action to avoid the dietary and medical deprivations which occurred here and that his failure to do so constituted sufficient direct involvement in the ultimate deprivation to support liability independent of the doctrine of respondeat superior.

We affirm the judgment below. The factual determinations which support this judgment are not clearly erroneous, and there is ample authority for the proposition that deprivation of essential medical or dietary care constitute cruel and unusual punishment. *Thomas* v. *Pate*, 493 F. 2d 151, 157-59 (7th Cir. 1974), *Sawyer* v. *Sigler*, 445 F. 2d 818 (8th Cir. 1971).

AFFIRMED.

PETITIONER'S EXHIBIT "B"

THE COURT: What I am about to say may stand as my findings of fact and conclusions of law.

Sometime in 1972, Donald Wright, the plaintiff, commenced an action in this court under the caption, Donald Wright, plaintiff, versus Department of Corrections Hospital, Doctors, Pharmacists, Warden, defendants, No. 72 C 2281.

In his complaint he alleged that he suffered from a physical condition resulting from the resection of some 65 per cent of the small intestine, which created a short bowel syndrome, otherwise known as a malabsorption syndrome, and that he had not been receiving proper medication and diet for his condition from the prison authorities.

Because it appeared from the papers that there might be some possibility that the plaintiff's health was being adversely affected, I ordered an expedited hearing and held that hearing on November 3, 1972. At the hearing the prison officials testified and Warden Twomey himself was a witness.

I entered findings of fact and conclusions of law following the conclusion of that hearing on or about December 22, 1972. Those are marked, together with the minute order, dismissing the complaint as Plaintiff's Exhibit 1. Although the findings and conclusions were entered at the time I actually announced my ruling, it is my recollection, although I do not have the transcript on November 3rd at the conclusion of the hearing.

At the conclusion of the hearing I said to the prison officials that I had concluded that Mr. Wright had not suffered physically by reason of any denial of diet or

medication while he was in prison, and in reaching that conclusion, incidentally, I relied on the report of the physician who had examined Mr. Wright shortly before the hearing, a Dr. Rudolph W. Roesel, whose report to me, dated November 9, 1972, appears in the record. I cannot presently account for the fact that that is dated November 9 and a hearing was held on the 3rd. It may be that the hearing was in two installments and I announced my decision on the later one, although I am quite sure I had Dr. Roesel's opinion before me at the time of the hearing and at the time I reached my decision that Mr. Wright had not suffered any physical deterioration as a result of denial of diet or medication during his imprisonment.

I also recall that at the hearing I had admonished the prison officials to be sure that Mr. Wright received adequate diet and adequate medication for his condition during the remainder of his period of incarceration. Notwithstanding that admonition and the assurances I had at the time from the prison officials no more than a few weeks elapsed before Mr. Wright was sent to the Detention Hospital with the direction that he be placed on isolation rations.

The evidence shows that on December 1, 1972, at about eleven o'clock he became involved in some kind of an altercation with another inmate named Hoffman, and that the prison official in charge of the premises where that altercation occurred made an Inmate Violation Report to the Disciplinary Committee, which is Plaintiff's Exhibit 4. That report was immediately placed before the committee and that very day Mr. Wright was taken before the committee and a hearing was held with respect to the incident.

It appears to me that the hearing was held in compliance with the then existing Administrative Regulations of the State of Illinois Department of Corrections, Adult Divi-

sion on the subject of disciplinary procedure. A copy of those regulations appears in evidence as Defendants' Exhibit 2.

While those regulations would not appear to meet the present standards as enunciated in a decision since that time, those were the regulations in effect at the time this hearing was held. They were later supplanted by Defendants' Exhibit 3, which, in turn, was supplanted by Defendants' Exhibit 4, but we need not concern ourselves with the later regulations.

The Disciplinary Committee accepted the facts as stated in the report and placed the plaintiff, Donald P. Wright, or ordered him placed in isolation for ten days and recommended transfer and also provided for his isolation rations. That appears from Plaintiff's Exhibit 4.

There are two versions of the report of action by the Disciplinary Committee. There is, in addition to Plaintiff's Exhibit 4, a copy of which was given to Mr. Wright, Defendants' Exhibit 5 which on the front is a carbon copy of Plaintiff's Exhibit 4. Plaintiff's Exhibit 4 is stamped "inmate's copy." On the back of Plaintiff's Exhibit 5 there is written in somewhat different handwriting from Plaintiff's Exhibit 4 the same statement with respect to accepting the facts as stated in the report, and then the words "placed in Detention Hospital on isolation rations ten days and recommended for transfer." The words "in Detention Hospital" appear to be inserted and the word "rations" is inserted after "isolation."

So it appears clear that the Disciplinary Committee consisting of Lieutenant Trapp, Officer Jones and Counselor — I'm sorry, it's Lieutenant Sharp, Officer Jones and Lieutenant Trapp, directed that the prisoner be placed in the Detention Hospital with isolation rations.

They apparently at some point recognized that he should go to the Detention Hospital rather than isolation because of his condition, but they apparently persisted in their direction of isolation rations for the prisoner.

He was taken to the Detention Hospital, and apparently received some food late that day, but he apparently missed his midday meal by reason of the fact that the altercation took place just before he was supposed to have it, and then he was occupied with the hearing and the aftermath until sometime in the afternoon when he went to the Detention Hospital, and he received something to eat that day but he did not receive his regular ration.

Now at the time this incident occurred the defendant Dr. Venckus had prescribed for the plaintiff a diet of six meals a day plus the dietary supplement Portijin in the amount of 67 ounces of Portijin, and also Lomotil.

The evidence is in conflict as to the diet of the plaintiff during the time he was in the Detention Hospital. The plaintiff's own testimony is confusing on that subject. He said, as I pointed out to counsel during the argument, first that Dr. Wilson came to see him on the Monday after the Friday he was incarcerated, which would have been December 4, and then later in his testimony he said Dr. Wilson came around on Thursday, which would have been December 7.

The testimony of the defendants' witnesses is characterized by a lack of specific recollection, but one thing is clear, and that is that he was given not six meals a day, but three meals a day, and at most he was given meals that were in somewhat greater quantity than the meals that would have been given to an ordinary prisoner.

I am satisfied that at least during the period Friday until Monday he received something less than ordinary

prison fare. That is perhaps explained by Sergeant Simpson's departure for his holiday, for his weekend holiday, at about three o'clock on Friday afternoon, shortly after Wright arrived at the Detention Hospital. Lieutenant Simpson, of course, was the keeper in charge of the hospital, and apparently Mr. Wright received some food that day but went through the weekend without, certainly without diet and the supplement that Dr. Venckus had prescribed for him.

Apparently conditions improved somewhat after the weekend, but I find from the evidence that during the ten days he was in the hospital he did not receive the six meals a day and the dietary supplement and the medication prescribed for him by Dr. Venckus or a substantial equivalent of the diet, the dietary supplement and the medicine. He apparently received some medication, but at least during the weekend the confusion that attended his diet probably attended the medication.

I think that notwithstanding the fact that the prison officials had ample notice of Mr. Wright's condition and his concern about his own health, which may or may not have been neurotic or psychotic, they did not pursue the matter and make sure that he received the six meals a day, and the rest of the special treatment that he was supposed to get in view of his physical condition notwithstanding, incidentally, that I discussed that matter with him at the hearing when they were up here and they assured me they would watch it, and I am sure they in good faith intended to watch it, but as a result of this disciplinary incident his physical condition was lost sight of and matters were allowed to slide for several days without his receiving the diet supplements and, at least for part of that time, the medication he was entitled to and that was necessary in order to assure his continued health.

I am satisfied that he did not suffer any permanent physical impairment as a result of that deprivation.

His weight, during the period in question, ranged from 148 to 151 pounds between the time he was incarcerated on March 24, 1972, and the approximate time of the hearing before me in November of 1972.

In March of 1973 his weight had dropped about ten pounds to 140 pounds, and it was up to 153 pounds, five pounds more than he weighed when he entered the institution, at the approximate time of his discharge on June 6, 1973.

Whether or not the drop between November and March from 151 pounds to 140 pounds was attributable in whole or in part to the deprivation he suffered while in the Detention Hospital is not shown by the evidence.

The evidence does show, however, that while he was in the Detention Hospital he did suffer symptoms that would be expected, and Dr. Venckus acknowledged they would be expected, from the presence of the malabsorption syndrome and the absence of the appropriate diet supplement and medication. That is to say he experienced in some degree nausea, vomiting and diarrhea, and that was caused by the fact that he was denied the regimen which Dr. Venckus prescribed for him.

Now I think all of the prison officials who are left in the complaint were involved in one way or another. Ordinarily I would not have held the warden on the theory respondeat superior, but he was in the courtroom, I can take judicial notice of that, and we discussed Mr. Wright's condition and the need for carefully watching the situation, and he was well aware of it and in my presence assured me that it would be properly taken care of. I think under those circumstances his involvement is suffi-

cient so that he should be held liable along with the others without resort to the doctrine of respondeat superior.

I hold also liable Dr. Venckus, because he received notice on December 2 that the plaintiff had, for disciplinary reasons, been placed into Detention Hospital on isolation rations, and I refer to Defendants' Exhibit 10, a memorandum from Lieutenant Sharp and Sergeant Simpson dated December 1, 1972, a copy of which went to Dr. Venckus. Dr. Venckus has absolutely no recollection of the incident and no recollection of what was done with Mr. Wright.

I should have thought that prison officials who had come to court to testify a few weeks earlier would have seen to it that when an incident like this arose the doctor's prescription would have been faithfully carried out while the prisoner was undergoing disciplinary confinement and that an appropriate record would be made so that it could be established that the assurances the prison officials had given the Court were carried out. That was not done.

We are at the disadvantage at this hearing of having prison officials who remember no more about this incident than one would expect if it had occurred several years ago, and they had had no reason to believe that litigation would result from it. A possible exception to that is Officer Jones, who had some recollection of the incident and to some extent Sergeant Simpson, who had some recollection of the matter, but who could not say at first-hand what had been given the prisoner while he was not present.

Not so far as liability is concerned, I find liability on the theory that the deprivation of proper medication and diet while the prisoner was incarcerated deprived him of Eighth Amendment rights. I do not find that there was

a due process violation by reason of the procedure at the hearing, because the regulations then in effect were, so far as the evidence shows, believed in good faith to be in conformity with Constitutional requirements by the officials who conducted the hearing.

Now turning to the matter of damages there is very little for the Court to go on. I am satisfied — I say I am satisfied — there is no evidence from which I could find that the plaintiff suffered any physical permanent impairment, so what we are talking about is a period of discomforture and, I suppose it would be proper to characterize is as an illness for a period of ten days, more or less. At the latter part of the ten days the situation got better. As I understand it, there is no contention that he got his six meals a day during any part of the ten days, but at least during the latter part he got more food and suffered less.

I think Mr. Moritz is right that it would not be inappropriate for the Court to assess exemplary damages under 1983 under proper circumstances. I do not think that in this case any of the prison officials acted wilfully. If they had, I would be disposed to assess some substantial exemplary damages. I think they acted with gross negligence, knowing of his condition, and they were charged with knowledge of his condition. The Disciplinary Committee recognized it when they posted him to the Detention Hospital but left him on isolation rations, and Sergeant Simpson said he knew of it, and Dr. Venckus of course knew of it and Warden Twomey was here in court and he certainly knew of it. They all knew of it, and I think that they were all guilty of varying degrees of gross negligence in allowing a situation to develop in which he was put into detention and not properly fed.

I am going to assess damages in favor of the plaintiff in the amount of $500, which I think is appropriate in view of the length of time involved and in view of what, so far as I can determine from the evidence, was the amount of pain and suffering involved, and I have in mind in fixing that figure, of course, the fact that there is, the plaintiff did not suffer permanent injury. If he had, the amount would have, of course, been larger.

Judgment will be entered accordingly in favor of the plaintiff and against the defendants in the amount of $500.

MR. MORITZ: Thank you, your Honor.

MR. LEVAD: Could you clarify one thing, your Honor.

THE COURT: Yes.

MR. LEVAD: Is that against all the defendants?

THE COURT: That is against all the defendants and the judgment is joint and several.

(Which were all the proceedings had in the above-entitled cause.)

PETITIONER'S EXHIBIT "C"

ADMINISTRATIVE REGULATIONS
STATE OF ILLINOIS
DEPARTMENT OF CORRECTIONS
ADULT DIVISION

Section Number 845
Effective Date: February 1, 1975
Supersedes A. R. 845
Dated: February 15, 1972

Subject: Grievance Procedures for Residents

I. POLICY OF DEPARTMENT: To provide an opportunity for residents to air and seek resolution to complaints, problems and grievances which they have not been able to resolve through other avenues available at the institution or facility. Such a grievance procedure ensures the involvement of active local and departmental administration with individual residents' problems, and that all residents are treated in an equitable manner.

II. EXPLANATION:

A. As a matter of policy, the Chief Administrative Officer of each Adult Division institution or facility shall install locked mailboxes in all cellhouses, dormitories and residential units into which residents may place written complaints and grievances designated for the Chief Administrative Officer or the Chairman of the Institutional Inquiry Board. All communications placed in these boxes by residents are to be collected daily and routed directly to the addressees.

B. Each Chief Administrative Officer shall appoint three employees to serve on the Institutional Inquiry Board to attempt to resolve problems, complaints and grievances that residents have been unable to resolve through normal channels. One of these employees shall be designated as Chairman of the Inquiry Board. The Chief Administrative Officer shall also appoint several alternate members who may serve in the absence of a regularly-appointed Board member. At least one member of every such Inquiry Board shall be a superior officer of lieutenant rank or above, and at least one member shall be a program services staff member.

C. No employee directly responsible for the condition or action being grieved may sit on the Inquiry Board that hears that particular case.

D. The Institutional Inquiry Board shall meet at least weekly, providing one or more problems, complaints, or grievances have been filed with the Chairman of the Board.

E. A resident must have an opportunity to appear before the Institutional Inquiry Board, and the Board shall have the right to summon any other witnesses — residents or staff — it deems appropriate.

F. The Institutional Inquiry Board shall file a written report regarding its findings and recommendations with the Chief Administrative Officer within 10 working days after the complaint is received by the Chairman of the Inquiry Board.

G. The Chief Administrative Officer or his designee shall, after evaluating the Inquiry Board's report, advise the resident in writing as to what action, if any, he has taken or intends to take within five calendar days after receiving the Board's report. Copies of the

resident's letter to the Board, copies of the Board's report to the Chief Administrative Officer, and copies of the Chief Administrative Officer's response to the resident shall be maintained for at least one year and shall be available to the Administrator of Institution Services and/or the Director of Corrections upon request.

H. If, after receiving the official response from the Chief Administrative Officer, the resident still feels that the problem, complaint or grievance has not been resolved to his satisfaction, he may appeal in writing to the Director of Corrections.

I. The Director of Corrections and/or his designee will review all such complaints, problems or grievances submitted. If, after reviewing all the reports from the Institutional Inquiry Board and the local administration, the Director feels that the case is without merit, he will so advise the resident in writing.

J. If the Director is of the opinion that the case has merit or that further investigation of the complaint, problem or grievance is in order, he will refer the matter to the Administrative Review Board.

K. A three-member Administrative Review Board shall be appointed by the Director, and at least one member of the Board shall be an individual not employed by the agency.

L. The Administrative Review Board will meet as frequently as necessary and may schedule hearings at Adult Division institutions. When such hearings are scheduled, the Board shall have the authority to call witnesses before it — residents and staff.

M. The Administrative Review Board shall file with the Director of Corrections a written report which shall contain the Board's findings and recommendations.

N. The Director will make a final determination and so advise the resident in writing.

O. Residents of Adult Division institutions and facilities must be informed of these procedures in writing by the Chief Administrative Officer.

P. Under no circumstances may any disciplinary action be taken against a resident for using the procedures established herein.